IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET.
CIVIL APPLICATION NO.167 OF 2005
IN
APPEAL FROM ORDER NO.194 OF 2005

Prabhakar Y. Kotkar ...Appellant

vs.

Municipal Corporation of
Greater Bombay ...Respondent

Mr.S.B.Prabhawalkar h/f Manoj Mhatre for the Appellant
Ms Geeta Joglekar for the Respondent

CORAM: A.S.OKA,J.
DATE : MARCH 14,2005.

P.C.:

1. Rule. Respondent waives service.

2. Heard Counsel appearing for the parties. The suit filed by the Appellant arises out of notice under Section 351 of M.M.C.Act, 1888 and the order passed thereon. In the reply filed by the Appellant to the notice under Section 351, a specific contention has been raised that the suit structure is situated on Government land and therefore, as per the existing policy, the structure cannot be demolished. After the said reply is filed, an order is passed by the Assistant Commissioner of Respondent-Corporation on 24th January 2005. On the face of it, the case made out by the Appellant based on the policy of the State Government, is not considered by the Assistant Commissioner and he has recorded only one finding that the structure is unauthorised and there was no evidence

to show that it was existing before the datum line i.e.1st April 1962. Thus while passing the order the main contention raised in the Reply is not considered.

3. Perusal of the impugned Judgment and order shows that this aspect is not considered by the learned Trial Judge and he has come to the conclusion that the policy relied upon is applicable only to the slum area.

4. Prima facie there is non application of the mind while passing the order by the Assistant Commissioner of the Respondent-Corporation. At this stage, the learned Counsel for the Respondent-Corporation stated that the part of the structure has been demolished. The said fact is controverted by the learned Counsel for the Appellant.

5. Till disposal of the Appeal, parties will maintain status quo as of today in all respects. Notwithstanding the interim order passed by this Court it will be open for the Respondent-Corporation to consider the reply filed by the Appellant to the notice under Section 351 of M.M.C.Act, 1888 and to pass a fresh order. In case the Assistant Commissioner of Respondent-Corporation desires to pass a fresh order, he will give a notice to that effect to the Appellant. Civil Application is disposed of accordingly.

6. Parties to act upon an authenticated copy of this order.

JUDGE.